

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

3M COMPANY,

Plaintiff,

v.

RX2LIVE, LLC, and RX2LIVE, INC.,

Defendants.

No. 1:20-cv-0523-NONE-SAB

ORDER GRANTING MOTION FOR  
TEMPORARY RESTRAINING ORDER;  
AND ORDERING DEFENDANTS TO SHOW  
CAUSE RE PRELIMINARY INJUNCTION

(Doc. No. 14)

On April 10, 2020, plaintiff 3M Company (“3M”) filed a complaint against defendant RX2Live, LLC. (Doc. No. 1.) On April 19, 2020, plaintiff filed an amended complaint, adding RX2Live, Inc. as a defendant. (Doc. No. 8.) On April 27, 2020, plaintiff filed a motion for a temporary restraining order (“TRO”) and preliminary injunction as to its federal and state claims for trademark infringement and dilution, unfair competition, false endorsement, false association, false designation of origin, and unlawful, unfair, and fraudulent business acts and practices. (Doc. No. 14-1.) 3M seeks temporary injunctive and preliminary relief to prevent defendants RX2Live, LLC and RX2Live, Inc. from using 3M’s trademarks in connection with defendants’ promotion of goods or services, including plaintiff’s 3M-brand N95 respirators. (*Id.*) As of the date and time of entry of this order, no defendant has filed an opposition to the pending motion or

1 otherwise attempted to communicate with the court.<sup>1</sup> Having reviewed the record and the  
2 relevant authorities, the court grants the motion for a TRO and orders defendants to show cause  
3 why a preliminary injunction should not issue.

4 **IT IS HEREBY ORDERED** that 3M's Motion for a TRO is **GRANTED** in its entirety.  
5 It is hereby further **ORDERED** that:

6 1. Defendants appear before The Honorable Dale A. Drozd, District Judge, United  
7 States District Court for the Eastern District of California, on **Tuesday, May 12, 2020, at 10:00**  
8 **a.m. (Pacific Time)**, via telephone conference pursuant to General Order No. 612 issued on  
9 March 16, 2020, and show cause (the "Show Cause Hearing") as to why the court should not  
10 enter an Order, pursuant to Federal Rule of Civil Procedure 65(a), that:

11 a. Preliminarily enjoins defendants, their agents, servants, employees, officers and all  
12 persons and entities in active concert and participation with them from using the "3M" trademarks  
13 (the "3M Marks") and any other word, name, symbol, device, or combination thereof that is  
14 confusingly similar to the 3M Marks, for, on, and/or in connection with the manufacture,  
15 distribution, advertising, promoting, offering for sale, and/or sale of any goods or services,  
16 including, without limitation, plaintiff's 3M-brand N95 respirators, during the pendency of this  
17 action, and

18 b. Preliminarily enjoins defendants, their agents, servants, employees, officers and all  
19 persons and entities in active concert and participation with them from engaging in any false,  
20 misleading, and/or deceptive conduct in connection with 3M and its products, including, without  
21 limitation, representing themselves as being authorized distributors, vendors, agents,

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22 <sup>1</sup> The court finds that plaintiff has made reasonable attempts to provide defendant notice of its  
23 motion for a TRO and this court's April 28, 2020 minute order via telephone, e-mail, and  
24 overnight delivery. (Doc. No. 14-2 at 2-3; Doc. No. 14-3 at 2; Doc. Nos. 16, 17.) Plaintiff  
25 indicates that all relevant documents were delivered on April 27 and April 29, 2020 to the home  
26 of defendants' CEO Brian Hazelgren in Mesa, Arizona (Doc. No. 14-2; Doc. No. 14-41; Doc. No.  
27 17), the same address where plaintiff personally served its Complaint, First Amended Complaint,  
28 and summons upon defendant. (Doc. No. 15.) The court notes that defendants did not retain  
attorney Joe Lipari of The Sultz Law Group as counsel and that plaintiff has been diligent in  
attempting to determine whether defendants have retained counsel and whether defendants would  
stipulate to a resolution of plaintiff's motions. (Doc. No. 17.)

1 representatives, retailers, and/or licensees of 3M and/or any of 3M's products (including, without  
2 limitation, 3M-brand N95 respirators); falsely representing to have an association or affiliation  
3 with, sponsorship by, and/or connection with, 3M and/or any of 3M's products; falsely  
4 representing that 3M has increased the price(s) of its 3M-brand N95 respirators; and offering to  
5 sell any of 3M's products at a price and/or in a manner that would constitute a violation  
6 California Penal Code § 396 and/or California Business and Professions Code §§ 17200 *et seq.*,  
7 during the pendency of this action.

8         2.       Sufficient reason having been shown therefor, from the date of this Order, through  
9 and including the date of the Show Cause Hearing, Defendants, their agents, servants, employees,  
10 officers and all persons and entities in active concert and participation with them, are hereby  
11 temporarily restrained, pursuant to Federal Rule of Civil Procedure 65(b), from engaging in any  
12 of the acts and/or conduct described in Paragraphs 1(a) and 1(b) of this Order.

13         3.       Pursuant to this court's equitable powers and discretion, 3M need not post a bond.

14         4.       3M and/or its authorized representative(s) shall serve defendants with copies of  
15 this Order and all pleadings and other papers in support of the Order on or before **Monday, May**  
16 **4, 2020**, by overnight courier service with verification of receipt.

17         5.       Defendants shall file an Opposition, if any, to the Order to Show Cause on or  
18 before **Thursday, May 7, 2020**. Defendants are forewarned that failure to timely file an  
19 opposition waives any right to be heard in opposition at the hearing on the pending motion for  
20 preliminary injunction and may result in the hearing being vacated and the matter submitted for  
21 decision on the papers. *See* Local Rule 230(c); *see also Goldberg v. Barreca*, 720 F. App'x 877,  
22 878 (9th Cir. 2018) (holding district court did not abuse its discretion by failing to hold  
23 evidentiary hearing when initially ruling on preliminary injunction motion because it did not need  
24 to resolve any factual disputes).<sup>2</sup>

25         6.       Plaintiff shall file and serve its reply to defendant's opposition, if any, on or before  
26 **Friday, May 8, 2020**.

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27         <sup>2</sup> Citation to this unpublished Ninth Circuit opinion is appropriate pursuant to Ninth Circuit Rule  
28 36-3(b).

